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The donor's right to information and consent in the case of human organ transplantation

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Abstract

Transplantation technology refers to the medical procedure by which human body tissue is removed from the body and retransplanted into another human being, with the intention that the transplanted tissue in its new location performs the function it did before, and while overcoming the medical barriers to organ transplantation (either after death Or among the living), legal and ethical obstacles have emerged that severely limit this precise medical procedure, which requires addressing this procedure comprehensively through legislation, in order to guarantee the rights of both the donor and the recipient, especially the donor and focus on his right to information and consent in the event of a transfer and transplant human organs.

Keywords: organ transplantation, media, consent, donor, medicine, ethics.

ملخص:

يقصد بتكنولوجيا زرع الأعضاء ذلك الإجراء الطبي الذي يتم من خلاله إزالة أنسجة الجسم البشري من الجسم وإعادة زرعها في إنسان آخر، بقصد أن يؤدي النسيج المزروع في موضعه الجديد الوظيفة التي كان يؤديها من قبل، ومع التغلب على العوائق الطبية أمام زراعة الأعضاء (سواء بعد الوفاة أو بين الأحياء)، ظهرت عقبات قانونية وأخلاقية تحد بشدة من هذا الإجراء الطبي الدقيق، الأمر الذي يستدعي معالجة هذا الإجراء بشكل شامل من خلال التشريع، وذلك لضمان حقوق كل من المتبرع والمتلقي، وبالأخص المتبرع والتركيز على حقه في الإعلام والرضا في حالة نقل وزرع الأعضاء البشرية.

كلمات مفتاحية: زرع الأعضاء، الإعلام، الرضا، المتبرع، الطب، الأخلاق.

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1. INTRODUCTION

Medical progress is considered one of the most important features that distinguish the achievements of modern scientific development, considering that it has brought about a legislative revolution with regard to new medical works that are outside the traditional system of medical work.

The process of transferring and transplanting human organs is a form of scientific medical knowledge that has brought about a qualitative shift in the medical field, such that it has developed traditional therapeutic methods and allowed the patient to be transplanted with an organ to replace that damaged organ, whether it was transferred from a living or dead donor.

The process of transferring and transplanting human organs is also described as the transfer of an organ or a group of tissues or cells from a donor to a recipient to replace the damaged organ¹.

This progress in the field of medical sciences, especially with regard to the transfer and transplantation of human organs, has necessitated the creation of a sound legal and legal framework, especially as it relates to the most precious thing that a person possesses, which is health and safety of life. Therefore, the Algerian legislator was keen on the new health law to find legal mechanisms that achieve a balance between the interests of the donor of his organs.

These operations may not raise the slightest legal problem for the recipient patient as they fall within the legally permissible medical surgical procedures. However, the real problem arises for the donor person who gave up one of his organs despite the health of his body, which may cause him permanent harm. Therefore, the Algerian legislator obliged during the new health law, it is necessary to inform the donor in the case of organ transfer and transplantation of the seriousness of the step he will take on the one hand, and to ensure his satisfaction on the other hand. Hence, **the following problem is determined by clarifying the content and scope of the donor's right to be informed and satisfied in the case of human organ transfer and transplantation?**

This intervention aims to reveal the desire of the Algerian legislator to establish legal protection for the human entity in general and human organs in particular, through the commitment to inform the donor and receive his satisfaction in the case of transfer and transplantation of human organs.

The study relied on the descriptive analytical approach, by studying a group of legal texts related to the transfer and transplantation of human organs in general, and searching for the extent to which they acknowledge the right of the donor with the consent and the media in the case of transfer and transplantation of human organs, by studying the feasibility of its

provisions, with what has become the reality of the transfer operations and human organ transplantation.

2. The Content of the Donor's Right to Consent in Case of Transplantation and Transplantation of Human Organs

Therapeutic legitimization of medical work requires patient satisfaction. Respect for patient freedom is one of the moral pillars adopted by medical professional codes in various countries of the world. This research is limited to examining the donor's right to consent in case of transplantation of human organs as a type of medical contract.

2.1 the right to approve the donation

2.1.1 The nature of the donor's consent in the case of human organ transfer and transplantation

Satisfaction and the will are a fundamental element of all contracts and also important for the doctor to perform the treatment, considering that the doctor can only affect the human body after ensuring the patient's informed satisfaction² this is for two important reasons which are:

A- The human body has a legitimate immunity and inviolability.

B- The medical contract is based on personal consideration, as the doctor does not impose anything on the patient in order to provide his medical services.

From this standpoint, the Algerian legislator explicitly imposed the necessity of an element of consent for the validity of the process of transferring and transplanting human organs in accordance with the article 360 of the new health law No. 18-11 relating to health.

The Algerian legislator addressed this point through the provisions of Article 162/1 and 2 of Law No. 85-05 relating to the protection and promotion of health ³ the article stipulates the following: It is not permissible to extract human tissues or organs from living people. Written consent is required for the donor of one of his organs. This consent is issued in the presence of two witnesses and is deposited with the institution, the physician, head of the department.

The donor may not express his consent unless the doctor informs him of the potential medical risks that the extraction process may cause. Consent is achieved when a person of private law authorizes an individual or individuals to carry out work on him by means of positive law, and this work may cause destruction or harm to the property or interest of the person from whom the permission was issued, or expose them to danger⁴.

The seriousness of the process of transferring and transplanting human organs necessitated ensuring the donor's consent to the human organ. It is inconceivable to compromise the

physical integrity of a donor without obtaining his consent, as we discover from extrapolating Article 360 of the new health law (No. 18-11 relating to health).⁵ the donor must give his consent in front of the competent President of the Court regionally, and it is his responsibility to ensure that the consent is free and informed, and that the transfer and transplantation of human organs conforms to the requirements of this Law. This is in contrast to what the Algerian legislator had settled on in Law No. 85-05 related to the protection and promotion of health, which required written consent from the donor in addition to the presence of two witnesses, and it was deposited with the director of the institution or the doctor, head of the department⁶. The Algerian legislator not only required the consent of the living donor, but also required the consent of the deceased to donate before his death, and this is what was approved by most comparative legislation⁷ This is what was stipulated in the provisions of Article 164/2 of Law No. 90-17 amending and supplementing Law No. 85-05 relating to the protection and promotion of health. In this case, extraction is permissible if the deceased expresses acceptance of this during his lifetime. This is confirmed by Article 165 of the same law: "It is prohibited to extract tissues or organs for the purpose of transplantation if the person expresses in writing his disagreement before his death or if this extraction hinders the completion of the forensic medical autopsy."

The Algerian legislator did not impose the necessity of a writing condition to verify the consent of the deceased donor through the living donor, which required written consent from him. However, with regard to the deceased donor, he required writing to prove his refusal to touch his human organs.

2.1.2 Conditions for the donor's consent in the transfer and transplantation of human organs

Out of respect for the sanctity of the human body, and given the seriousness of the process of transferring and transplanting human organs, the Algerian legislator restricted the patient's satisfaction to a set of conditions that will be discussed in this section.

First: the necessity of consent being free:

The Algerian legislator requires that the consent issued by the donor be free consent, meaning that the donor's will be sound and not flawed, with any defect in consent, whether it is mistake, deception, coercion, or exploitation, according to Articles 81-91 of the Algerian civil law.

If there is a defect of satisfaction that cannot be performed and the transplant of human organs, so that the satisfaction of the donor should be sound as a valid position, and this position remains until the time of the operation, it must be emphasized that the potential donor wishes to donate, free from temptation and coercion⁸ What is worth noting is that there are some comparative laws that require that the process of transferring and transplanting human organs be preceded by the donor being subjected to a medical

examination from a mental and psychological standpoint by a doctor other than the one who will perform the removal operation⁹.

Second: Eligibility of the human organ donor:

Article 361 of the new health law (No. 18-11 relating to health). stipulates that it is prohibited to remove human organs, tissues and cells from living minors or incompetent persons, and it is also prohibited to remove organs or tissues from living persons suffering from diseases that would affect the health of the donor or recipient.

We conclude from this article that the Algerian legislator prevented both minors and adults who are deprived of the ability to discriminate, and adults suffering from diseases that would harm their health and from here we can say that the permission was granted only to every person who has reached the age of 19 full years and is eligible for such action, the article 40 of the Civil Code stipulates that every person who has reached the age of majority, enjoys his mental faculties and has not been under interdiction, shall be fully The eligibility to exercise his civil rights and the age of majority is 19 full years¹⁰.

What should be noted is that the required qualifications for a human organ donor must be available at the time of agreeing on the removal. The rules of eligibility are part of the public order. It is not permissible to contract on the basis of absent capacity, according to Article 45 of the Algerian civil law which stipulates that “no one may waive his eligibility or change its provisions.”

The provisions of Article 44 of the Algerian Civil Code stipulate that minors according to their circumstances, are subject to the provisions of guardianship or wardship, within the conditions and in accordance with the rules established in the law as we find that the legislator according to the new health law, in Article 361 in its second paragraph allows the removal of stem cells from a minor donor only for the benefit of a brother or sister, and in the absence of other therapeutic solutions, this drain can be done exceptionally for the benefit of his cousins, it must be informed consent of both parents or their legal representative, thus granting the legal guardian of this minor to give his consent to the deduction from the minor he is caring for¹¹.

Third: The donor's satisfaction is not linked to financial compensation:

The Algerian legislator, under Article 358 of the new health law, explicitly rejects the donor's consent to transfer and transplant human organs in return for a financial reward. This is what the Algerian legislator approved under the provisions of Article 161/2 of Law No. 85-05 relating to the protection and promotion of health. If he accepted that the consent be in return for a financial reward, then here we allow the disposal of human organs through sale, because a person's right to his body is outside the scope of dealing, so there is no room for it to be an object of trade¹² because it conflicts with human dignity. However, there is nothing wrong with helping the donor financially.

Four: the donor's consent does not pose a threat to his life

Article 360 of the new health law (No. 18-11 relating to health), stipulates that it is not permissible to practice the removal of human organs, and Article 361 of the new health law also stipulates that it is prohibited to remove organs and tissues from living people suffering from diseases that would affect the health of the donor or recipient.

It becomes clear to us that the disposal of human organs is legal as long as it does not cause any danger to the health of the donor or the recipient, so that the donation does not threaten the physical safety of the donor on the one hand, and that the latter is healthy, not afflicted with any disease. Hence, it can be said that some conditions are forbidden like having a serious condition such as cancer, HIV, diabetes, kidney disease, or heart disease makes organ donation impossible¹³.

2.2 To refrain from consent

The Algerian legislator grants the donor the right to revert from the donation of one of its members under article 360, paragraph 6, of the new Health act unconditionally before the transplanting, but it is logical that the donor is not allowed to request the recovery of the donor member after its removal and transfer it back because of the risks to the donor and the recipient, in accordance with the requirement of necessity.

The return of the donor does not entail any legal accountability, since the general principle is that the integrity of the human body shall not be compromised. If we impose that Algerian legislator recognizes the recipient's compensation in the event of the return of the donor, the latter may have to continue on his approval only for fear of financial compensation¹⁴. Here, the comparative legislation unanimously agreed that if the donor spends on treatment expenses in order to prepare for the transplant, the donor is obligated to compensate him. However, with regard to moral damage, he does not require compensation for it, given that the legislator allowed this. The legal representative of a minor who is incapacitated is also permitted to refrain from consent like a full-fledged donor. Furthermore, when consent is expressly granted, the consent to donate organs remains valid unless withdrawn¹⁵. The Algerian legislature has set the time when a donor may renounce consent, in the sense that he may reverse his consent as long as the transplant of the human organ has not been transferred and transplanted, because his right to return fell after eradication, even if it has not yet been transplanted. The Algerian legislature has not imposed a legal form specific to the State, urging that it may be written or oral. However, we believe that it must also be written in order to avoid any dispute that may occur, especially if the eradication process is carried out by means of coercion or pressure, and the donor dies. How can the donor's family prove its dissatisfaction.

3. The Content of the Donor's Right to Information:

Aware of the seriousness of transplantation and transplantation of human organs, the doctor or committee of experts should seriously inform the donor of the step that he will make and its future effects on his physical well-being so that the donor's satisfaction is informed

3.1 Right to inform before transplantation of human organs

Article 360 of the new Health law (No. 18-11 relating to health), states in its eighth paragraph: "The Committee of Experts shall inform the donor in advance of the notification that he may be exposed to and the possible consequences of the dislocation, as well as the expected results of the transplant for the recipient."

It follows from this legal text that an operation is linked to informing the donor about the nature of this surgery. The doctor cannot dispose of any member of the donor's body without the latter being aware of the details of this operation¹⁶. Nevertheless, he is not obliged to inform the donor of the scientific and technical issues associated with the transfer and transplantation of human organs, but should explain the operation's effects on his physical integrity in a transparent manner. The inviolability of infringement of the human body imposes on the doctor the foresight of the donor of the operation, transfer and transplantation of human organs the doctor is obliged to provide information on the risks to which the donor may be exposed in the present or future, whether the risks related to the surgery or potential risks, So that the donor can distinguish the magnitude of the risks that he may be exposed to compared to the extent of the benefits that the donor will benefit, especially since this procedure is generally performed to achieve a therapeutic benefit not for the donor but for someone else¹⁷ It should be noted that the physician should provide the donor with a detailed and adequate explanation by the latter to the donor on the subject and raise it, whether it be at the psychological, social, financial or physiological level. The information provided by the doctor must be simple, clear and absorbable, taking into account the doctor's abilities and cultural level. Therefore, full insight must be given to the risks that the transfer and transplantation of human organs can cause, whether foreseeable or unexpected, but exceptional or not¹⁸.

It is sufficient for the doctor's obligation to inform the patient verbally in normal cases. However, regarding human organ transplantation and transfer operations, it requires that the notification be in writing¹⁹.

3.2 The donor's right to information after the donation process

The donor's right to information means the donor's right to view his medical file, a research that allows the donor to know the results of the tests, examinations, medical prescriptions, and the medical report that shows the diagnosis and treatment that will be given to the donor until he returns to his normal health. Considering that the doctor must provide the donor with the necessary care²⁰.

What should be noted in this regard is that if the donor or his family requests access to the medical file, this does not conflict with the disclosure of professional secrets, especially if we are faced with a medical error or in the event of the death of the donor. Therefore, the law grants the administrative judge a positive role in this matter²¹. After the removal process, the doctor is required to confirm to the donor the necessity of maintaining his health and to take into account the social and economic considerations that may befall the donor as a result of the donation process, such as his inability to perform certain tasks or enjoy certain benefits²².

4- Conclusion

As a summary of what was discussed in this study, although the transfer and transplantation of human organs has given great hope to many patients, it is considered one of the dangerous surgical operations that may cause unexpected complications on the human body. We note that amending the health law may:

- 1- Strengthen the protection system in place regarding the transfer and transplantation of human organs
- 2- The donor's consent must be before the judicial authorities, after it was only required in writing and the testimony of witnesses
- 3- The minor's guardian was allowed to consent to the removal of blood-forming stem cells from a minor donor only for the benefit of his brother or sister. In the absence of other therapeutic solutions, this removal could be done exceptionally for the benefit of his cousins.

These conclusions lead to some recommendations:

There must be strict legislative or judicial intervention regarding the doctor's responsibility in human organ transplantation and transplantation operations.

- Legal legislation must be regulated only for the management of human organs.
- Providing human and material resources to ensure the success of human organ transfer and transplantation.

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